# Warren Petryk

**State Representative • 93rd Assembly District**


Date: February 28, 2012

To: Members of the Committee on Financial Institutions

From: Representative Petryk

Re: SB 582

Good afternoon, and thank you, Chairman Kramer, and members of the Assembly Committee on Financial Institutions for the privilege to testify today in favor of this job-creating and job-sustaining bill, AB 582, which creates a legal framework for the rent-to-own, or Rental-Purchase Agreement industry in Wisconsin.

Seldom in this building do we Legislators get the incredible and fortunate opportunity before us today…the opportunity to support legislation that actually contains the sustainability of hundreds of existing manufacturing and sales jobs and the future creation of hundreds of new manufacturing and sales jobs in one bill. Those opportunities are intimately connected with our passage of this legislation.

Forty-seven States currently recognize the unique and distinct method of doing business known as Rental-Purchase Agreements. Unlike any other industry, the Rent-to-Own paradigm offers people the chance to obtain the use of household goods such as furniture, appliances, electronics, computers, and musical instruments through a short or long-term, no down payment transaction, with options to buy at any time, or return the product at any time. This offers the consumer a simple, easy to enter and easy to terminate, financially flexible number of options while renting the product. Consumers are never obligated to rent beyond the initial term, and they can return the product at any time without penalty. Simply put, the Rental-Purchase Agreement allows the consumer the ultimate in freedom of flexibility, freedom of options, and freedom of consumer choice. Aren't these some of the core principles important to each of us who believe in a free market system?

Who will utilize the Rental-Purchase Agreement? A wide variety of consumers, including:

- Business people in a short term or temporary position who wish to furnish an apartment or office
- Parents of children who think they want to learn to play an expensive musical instrument, only to discover six months later that they would rather be Facebooking and playing video games.


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- Military personnel, frequently transferred from base to base, but who want comfortable and useful furniture and appliances in their homes
- College students sharing apartments or dormitory rooms
- Political campaign office set ups
- Summer rentals
- People wanting state of the art televisions for Super Bowl or Final Four parties
- Hard-working families and individuals who want a choice in how they manage their finances without the burden of long-term debt, with the flexibility they need to meet sometimes uncertain economic circumstances

The Rental-Purchase industry once provided services in Wisconsin. However, a series of court decisions in the 1990's and early 2000's all but eliminated the industry by subjecting it to the Wisconsin Consumer Act. The WCA was designed and intended to protect consumers entering into credit transactions, which burden the consumer with a long-term obligation to repay a debt. A debt the consumer cannot simply walk away from. It was not designed for transactions like Rental-Purchase, in which the consumer is free to terminate the agreement at any time. Rental-Purchase in Wisconsin, like the industry in 47 other states, should be regulated separately from credit. Rental-Purchase should be regulated in a fashion that recognizes the unique flexibility the transaction provides to the consumer.

Because of its unique nature, a new section of State statutes must be created which will recognize this fact and avoid subjecting such transactions to Wisconsin laws which regulate traditional consumer credit sales. New definitions which will highlight the regulation of these transactions by the Department of Financial Institutions must be created in a specific and limited fashion. For example, the rental property is only that used for "personal, family, or household purposes" and the initial term of the agreement cannot exceed four months. This transaction is very easy to get into and out of, ideal for consumers who want or need the financial flexibility that only this unique transaction affords.

The unique nature of the transaction also means that certain consumer protections that are not required in credit transactions should be required in Rental-Purchase transactions. That is why AB 582 includes specific price limitations, early purchase option rights, and generous reinstatement rights.

As the U.S. Federal Trade Commission observed in its 2000 Survey of Rent-To-Own Customers:

> "Rent-to-own dealers typically include delivery, pickup, repair, loaner, and other services in the basic rent-to-own rental rate. Many traditional retailers charge

extra fees for these services, reflecting the value to the consumer and the cost to the seller. The return option provided with rent-to-own transactions also provides value to consumers and imposes costs on dealers, including the costs of retrieving, refurbishing, restocking, and re-renting the returned merchandise."

Rental-Purchase prices are reflective of the significantly higher costs associated with providing these additional services along with the flexibility to terminate at any time. Although, I generally agree with the WCA's "no caps" approach, the unique combination of goods, services, and options provided by Rental-Purchase agreements makes price limitations more important than in other consumer transactions. Accordingly, I favor price limits in the regulation of Rental-Purchase agreements. AB 582 caps cash prices and total of payments similar to the Rental-Purchase laws in California, Hawaii, Maine, New York, and West Virginia—the only other states that regulate Rental-Purchase prices in this fashion.

Reinstatement rights are an important feature of the Rental-Purchase transaction. Reinstatement gives consumers the option to end the agreement at any time, without additional cost or penalty, and then later reinstate the agreement without losing any of the value of payments already made.

Finally, AB 582 permits the Department of Financial Institutions to determine the appropriate Rental-Purchase disclosures through their rulemaking process. This will allow the DFI to review a broad range of existing Rental-Purchase disclosure methods and select what is best for Wisconsin consumers.

In conclusion, it is my hope that this Committee will recognize the unique qualities of the Rental-Purchase Agreement transaction and the urgency of moving this legislation forward. The benefits of doing so will be appreciated by new job-creators willing to open businesses in Wisconsin, current job-creators willing to remain in and expand their businesses in our State, and of course, our Wisconsin consumers and taxpayers who wish to choose this valuable and flexible method of doing business. The time is now for action on this very important piece of legislation.

Thank you so much, Chairman Kramer, and members of the Committee, for your kind attention to AB 582.

**Assembly Committee on Financial Institutions**
**February 28, 2012**

**Assembly Bill 582**

**On behalf of Wisconsin Rental Dealers Association**
**Testimony of Mike B. Wittenwyler**

Wisconsin is one of the few states without a specific law recognizing rent-to-own transactions. Instead, rent-to-own transactions are currently regulated under the Wisconsin Consumer Act (the "WCA") and, through a series of court cases in 1990s, are treated the same as traditional consumer credit sales. As a direct result, rent-to-own businesses are unable to operate in Wisconsin without a change in state law.

There are a number of significant differences between a rent-to-own transaction and traditional consumer credit sales:

- **Obligated Sales v. At Will, Terminable Leases** – The WCA was designed to regulate a transaction in which the consumer is obligated to pay all of the payments under a purchase contract. Rent-to-own is a transaction that can be terminated by the consumer at will. Rent-to-own dealers cannot offer a transaction in which consumers can walk away without penalty when those same dealers are required to comply with WCA regulations designed for an obligated sale with consequences for consumers who do not make all payments.

- **Obligated Payment Plan v. Week-to-Week Purchase of a Program** – Rent-to-own is the purchase of a bundle of merchandise and services, on a week-to-week or month-to-month basis. Consumers make a periodic rental payment and obtain the use of the merchandise as well as delivery and set up, product maintenance, a loaner if the merchandise breaks down, the option to acquire ownership, the right to make a no-penalty return, reinstatement rights and other benefits nonexistent in a traditional consumer credit sale. For example, consumers may choose to make rent-to-own payments weekly, semi-monthly, or monthly. The WCA is designed solely toward the regulation of monthly payments under a traditional consumer credit sale.

- **Annual Percentage Rates v. Indefinite, No-Obligation Rental Period** – The WCA requires an annual percentage rate ("APR") disclosure. Such a disclosure is consistent with credit sales that have definite payment periods and finance charges to purchase merchandise over a set period of time. In these credit sales, the difference between the cash price and the total amount that must be paid is interest, pure and simple.

  A rent-to-own transaction, however, is for an indefinite time period. How long financing will occur depends entirely on the consumer's circumstances and desires at any given time. Because of this uncertain time period, no APR finance charge can be calculated, much less disclosed. Only if false presumptions are made (such as presumptions that the consumer is obligated to make all payments and that the payment is entirely a finance charge) can APR be calculated. These presumptions, of course, are inaccurate and misleading and do not permit consumers to make informed choices about credit terms.

Because of these differences, rent-to-own transactions and traditional consumer credit sales warrant separate and distinct regulatory frameworks. Otherwise, without its own regulatory framework, rent-to-own businesses cannot operate in Wisconsin.

To standardize the activities and practices of rent-to-own business while protecting Wisconsin consumers, Assembly Bill 582 would update state law and directly regulate rent-to-own transactions. AB 582 would:

- Create a new state law that specifically recognizes and regulates rental-purchase agreements and rental-purchase companies.
    - A rental-purchase company would be required to file with the Department of Financial Institutions ("DFI") within 30 days of commencing business in Wisconsin.
    - A $1,000 per location annual filing fee would be paid to DFI.
- Given that rent-to-own transactions are not the same as traditional consumer credit sales, more appropriate and precise regulations would apply to rental-purchase agreements instead of the WCA.
- Certain price and cost limitations would be required under state law.
    - The cash price for rental property would be limited to twice the rental-purchase company's purchase price or the current market price for such property – whichever amount is greater.
    - The total amount charged would also be limited to twice the rental-purchase company's purchase price or the current market price for such property – whichever amount is greater.
    - The acquisition price of the rental property could not exceed 55 percent of the difference between total of rental payments necessary to acquire ownership and the total amount of rental payments paid for use of the rental property at that time.
- In the event that any rental property is returned or surrendered by a consumer, consumers would have certain reinstatement rights and rental-purchase companies would be required to provide written notice of such rights.
- DFI would have enforcement authority to act on consumer complaints and ensure compliance with state law.
- Violations would subject rental-purchase companies to a range of statutory penalties, including payment of a consumer's reasonable attorneys' fees in bringing an action.

Wisconsin law clearly needs to be modernized to better regulate rent-to-own transactions. 47 other states already have such laws in place, consistent with federal consumer and tax laws.

With Assembly Bill 582, Wisconsin will join these other states and establish its own regulatory framework for rent-to-own transactions so that these businesses may operate in Wisconsin.

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LEGAL Action
OF WISCONSIN
40 Years of Justice

TO: Assembly Committee on Financial institutions

FROM: Bob Andersen

RE: AB 582, relating to rental purchase agreements and granting rule-making authority

DATE: February 28, 2012

Legal Action of Wisconsin, Inc. (LAW) is a nonprofit organization funded by the federal Legal Services Corporation, Inc., to provide civil legal services for low income people in 39 counties in Wisconsin. LAW provides representation for low income people across a territory that extends from the very populous southeastern corner of the state up through Brown County in the east and La Crosse County in the west. Consumer law is one of the principal priorities of the organization.

This is very bad legislation for several reasons:

1. **This Has Been Vetoed Twice – Once by Governor McCallum and Once by Governor Doyle – The Legislation Exempts Rent to Own from the Wisconsin Consumer Act**

The industry has attempted a few times to gain an exemption from the Wisconsin Consumer Act (WCA) through litigation that went to the state courts of appeal and the federal district court, dating back to 1993. The courts ruled against the rent to own industry on each occasion, stating that the transactions are the same as any other consumer credit transaction, where the property is purchased over time with a finance charge involved. Afterwards, the rent to own industry tried on several occasions to persuade the legislature to enact legislation that would exempt it from the Wisconsin Consumer Act. On several occasions, the legislature rejected the effort. On two occasions, the legislation passed both houses. Both times, the legislation was vetoed.

2. **The Principal Reason the Industry Seeks to Be Exempt from the Wisconsin Consumer Act Is That it Does Not Want to Have to Reveal to Consumers How Much it Is Charging in Interest Rates**

***In rent to own transactions, interest rates of 200-300 % or more can be charged against consumers in the purchase of a product and under this bill this would happen without even notifying the consumer of that rate! This is exactly the reason that the industry seeks to be exempt from the Wisconsin Consumerbecause it knows that consumers will balk at entering into these transactions, if they know how much they will be paying.***

***In this legislation, amazingly enough, rent to own companies are prohibited from disclosing interest rates! Provision in the bill says that disclosure is not required, but the text actually says it is prohibited!***

On page 6, lines 5-8, the bill provides:

(4) ANNUAL PERCENTAGE RATE DISCLOSURE NOT REQUIRED. A rental-purchase agreement shall not disclose, in a rental-purchase agreement or otherwise, any percentage rate calculation, including a time price differential, an annual percentage rate, or an effective annual percentage rate.

3. **These Transactions are No Different than Ordinary Consumer Credit Transactions, Because Consumers are Simply Buying Products Over Time.**

*According to the Federal Trade Commission, 70% of these consumers end up buying the product.* So these transactions are no different than other transactions covered by the Wisconsin Consumer Act – people are buying products over time and paying an interest rate. The ***legislature use to impose limits*** on how much a consumer could be charged. Then the legislature eliminated the ceiling on those rates, based on the perverse logic that eliminating the ceiling would lower rates. At least the law was maintained to tell the consumers how much they would be paying in interest. ***Now the people behind this bill want to stop even telling people how much interest they will be paying. Why? Because consumers will balk at buying the goods.***

4. **The Enactment of this Bill Will Result in the Sudden Expansion of 300 New Stores in this State.**

The only reason that the national rent to own industry has not expanded further in Wisconsin is that our law has required them to disclose interest rates. As soon as they no longer have to disclose interest rates, stores will begin to pop up all over. Is this the kind of enterprise we want to encourage in our state, where unseemly store fronts begin populating all corners of the state?

5. **There Are Several Other Important Provisions of the Wisconsin Consumer Act That the Industry Would Be Exempt From**

These protections include:

- §425.206 – Prohibition on self-help repossession
- §422.301 – Disclosures regarding finance charges (APR)
- §422.303(3) – Required notice to customer about consumer's rights
- §422.304 – Prohibition on documents containing blank spaces (ex. price)
- §422.305 – Notice to obligor regarding payment obligation
- §422.402 – Balloon payments prohibited
- §422.403 – Maximum periods of repayment
- §422.407 – Defenses assertable against an assignee of the creditor
- §422.413 – Limitation on default charges
- §425.103 – More restrictive definition of default under proposed § 422.615.

The exemption from these provisions in the Wisconsin Consumer Act, means that the rent to own industry would be exempt from the following regulations:

- Providing the consumer with due process in repossession actions. (Removes any third-party review of the consumer's rights and payment record.)
- The definition of Voluntary Surrender. (It is currently not voluntary if the merchant asks. Picture the 80 year old woman facing the 250 lb. repo man. She says yes out of fear or ignorance and loses her rights.)
- Class action lawsuits against the industry. (They would only be allowed under limited circumstances carved out just for this industry.)
- Disclosures on the contract, including
    - An exemption from providing a standard notice to the consumer including telling them to read the contract, not to sign it if it has any blank spaces, and that they are entitled to an exact copy of any agreement.
    - An exemption from the prohibition against blank spaces
    - An exemption from providing a notice to obligors
    - An exemption from maximum periods of repayment
    - An exemption from preventing negotiable instruments other than checks to be used as payment
    - And an **exemption from "Claims and Defenses"** - This one is big. Assignees of rights of creditors are subject to all the claims and defenses of the customer under the Wisconsin Consumer Act. The exemption would allow Company A to sell an account to Company B and then prohibits the consumers from filing a claim against Company B. This seems like it could be abused easily.

6. **<u>The Bill Returns Us to the Days of Yesteryear When "Repo Men" Would Come to Seize Back the Goods.</u>**

When the Wisconsin Consumer Act was enacted, one of its chief goals was to terminate the practice of "self help repossession," which often created explosive situations. And unfair situations, where mistakes were made as to whether people were behind in payments. *Now **the people behind this legislation would like to turn the clock back 30 years to allow disputes, confrontations and altercations to take place between professional "repo men" and consumers. The legislation allows companies to engage in "self help" repossession. The legislation exempts the rent to own industry from the regulations on repossession that exist under the Wisconsin Consumer Act and the Uniform Commercial Code.***

The peace would be breached and confrontations would arise as a result of
- arguments that would break out over whether the surrender of property was "voluntary." Strong arm tactics by repossessors would lead to confrontations.
- arguments that would break out over whether consumers were actually in arrears on their payments.

***Under current law, surrender of merchandise must be truly "voluntary." <u>There is no right to "self help repossession."</u> Surrender may <u>not be made if it is pursuant to a request</u> or <u>demand</u> of the merchant or if it is made pursuant to a <u>threat</u> or <u>other statement</u> by the merchant that the merchant intends to take possession. <u>Surrender must be truly initiated by the consumer</u>.***

The statute reads as follows:

**425.204 Voluntary surrender of collateral.**

**(3)** The surrender of collateral by a customer is not a voluntary surrender if it is made pursuant to request or demand, other than a notice under s. 425.205 (1g)(a) [motor vehicles], by a merchant for the surrender of the collateral, or if it is made pursuant to a threat, statement, or notice, other than a notice under s. 425.205 (1g)(a) [motor vehicles], by a merchant that the merchant intends to take possession of collateral.

## 7. <u>The Expansion of Rent to Own and the Suffering that this Enterprise Brings to Families Who Had No Part in the Decision of Parents to Waste Their Money in This Way</u>

What about the spouses and children of these parents who unwisely decide to spend money on purchases and exorbitant interest rates? Money that could have been used for rent, food, clothing or education instead goes down the drain to pay for the exorbitant interest charges that are made for goods that families don't need and cannot afford. Does our society want to put more families in harm's way, make more families unstable, or make more families needy of public assistance?

## 8. <u>The Families Who Will be Targeted by this Industry are, By Definition, Poor People</u>

Obviously, the only people who will frequent these establishments are poor people. People with any real source of income will purchase the same goods from a regular merchant at regular prices. The proponents of this legislation openly acknowledge this. Indeed, their argument is that this is good for poor people, because they otherwise cannot get these goods! Of course the examples they give are people who need things like wash machines. But that's not what the prevailing practice is for rent to own. The prevailing use of rent to own is for expensive entertainment items that have no relationship to the bare essentials that families need. Besides, people can get essential items from local charities or government programs. The argument of the proponents is a sham.

## 9. <u>This is a Predatory Practice, no Different than Redlining or Other Discriminatory Practices that Target Poor People.</u>

Remarkably, unlike some of the other discriminatory practices that exist in society regarding insurance rates, loans, real estate, or the like – where the secondary effect is discriminatory -- for this industry, the express purpose is to target this population.

## 10. Federal Trade Commission Testified in July 2011 About the Characteristics and Demographics of a Rent-to-Own Transaction

In testimony before the House Financial Services Industry, the FTC said:

- Customers ultimately purchased 70% of the merchandise they obtained through RTO transactions. The purchase rate was consistently high (at least 60%) across most demographic groups.
- Sixty-seven percent of customers intended to purchase the merchandise when they began transaction.
- Thirty-one percent of RTO customers in the survey were African American, 79% were 18 to 44 years old, 73% had a high school education or less, and 59% had household incomes of less than $25,000.

Having found a high purchase rate, the Bureau of Economics recommended in its report that the basic terms of the RTO transaction, in particular the total cost of purchase, should be fully disclosed to consumers before they enter into the agreement. Information regarding the total cost of purchase, including all mandatory fees and charges, would allow consumers to compare the cost of an RTO transaction to alternatives and would be most useful if it were available while the customer was shopping.

## 11. Number of Rent to Own Stores in Other States

New Jersey and Wisconsin have not adopted specific rent to own laws. Some other states that have adopted rent to own laws have limited rent to own stores by other regulations. Wisconsin and New Jersey both have a fewer number of RTO stores when compared to other states with similar-sized populations. New Jersey has 65 RTO stores and a population close to nine million. Georgia, North Carolina, and Virginia each have similar-sized populations but significantly more RTO stores at 314, 323, and 221, respectively. While Wisconsin has 34 RTO stores, states with similar-sized populations such as Colorado, Maryland, and Missouri have 109, 91, and 267 RTO stores, respectively.

Texas has the highest number of RTO stores at 861, far beyond the state with the second highest number of RTO stores, Florida at 524 RTO stores. Minnesota and Alaska tie for the states with the lowest number of RTOs at 9 each. With the exception of Minnesota, the low numbers of RTOs may be attributed in part to the smaller populations of each of these states. With the exception of Wyoming and Delaware, all of the states with populations under one million people have less than 20 RTOs.

# Rent-to-Own Laws – Dates of Enactment

Rent-to-own laws have been in place in 47 states for at least 15 years, with the oldest law having been enacted 28 years ago.

**1980-1989: 20 States**

1984 Michigan
1985 Georgia, South Carolina, Texas
1986 Massachusetts, New York
1987 Arkansas, Illinois, Indiana, Iowa, Tennessee
1988 Florida, Missouri, Ohio, Oklahoma, Virginia
1989 Maryland, Nebraska, Nevada, Rhode Island

**1990-1999: 26 States and 2 Territories**

1990 Colorado, Kentucky, Minnesota
1991 Connecticut, Delaware, Kansas, Louisiana, South Dakota
1992 Maine, Washington
1993 Idaho, North Dakota, Oregon, Utah, West Virginia
1994 California, New Hampshire, Vermont
1995 Alabama, Arizona, Mississippi, New Mexico
1996 Pennsylvania, Wyoming
1997 Hawaii
1998 Guam, Puerto Rico
1999 Alaska

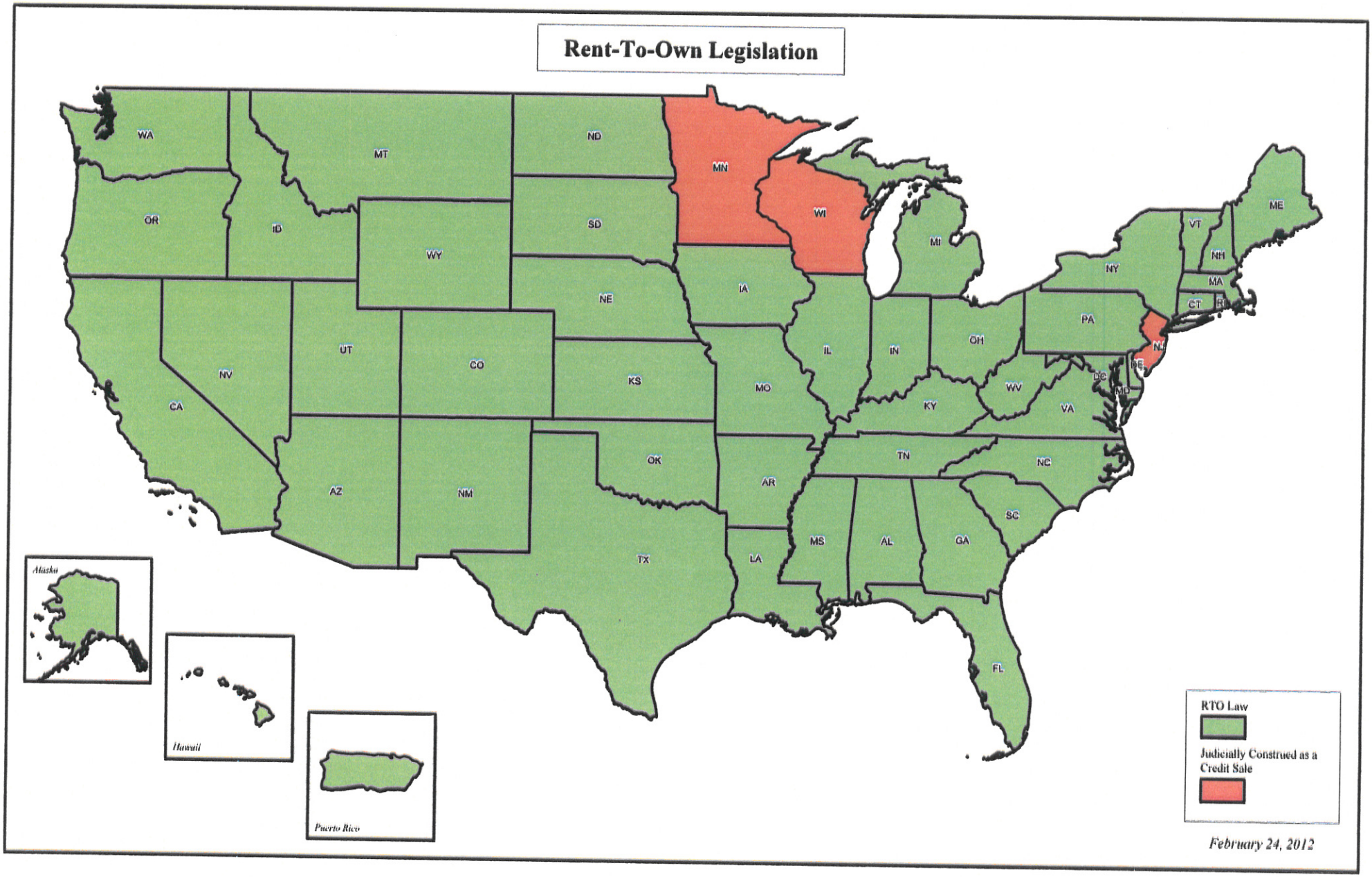
**2000-2009: 1 State and the District of Columbia**

2001 Montana
2002 Washington, D.C

**Note**

The Minnesota Supreme Court ruled that rent-to-own stores must comply with both the rent-to-own law and laws regulating credit sales, effectively barring rent-to-own transactions.

North Carolina does not have a rent-to-own law, but it specifies that a rent-to-own transaction is not a credit sale.


Rent-To-Own Legislation
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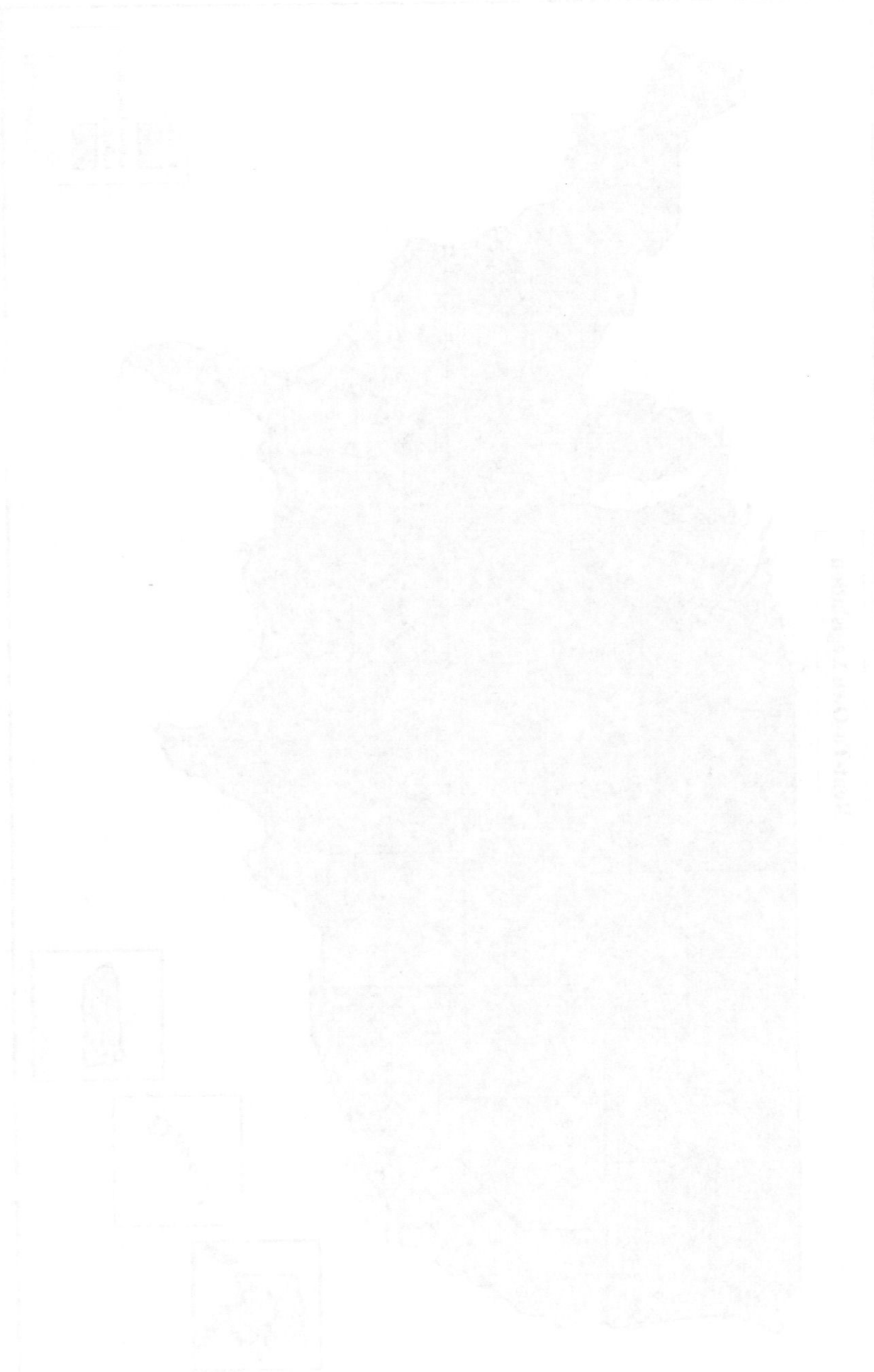
February 24, 2012



WISCONSIN CATHOLIC CONFERENCE

**TESTIMONY ON ASSEMBLY BILL 582:**
**RENT-TO-OWN LEGISLATION**

Presented to the Assembly Financial Institutions Committee
By Barbara Sella, Associate Director
February 28, 2012

On behalf of the Wisconsin Catholic Conference, I thank you for the opportunity to testify on Assembly Bill 582.

Our opposition to the bill is grounded both in Catholic social teaching – with its emphasis on the dignity of the human person, the common good, and special concern for the poor and vulnerable – and in the practical experience of Catholic agencies that are dedicated to serving families in economic need.

On numerous occasions, Pope John Paul II affirmed the benefits of free market policies, noting in one of his encyclicals that the "free market is the most efficient instrument for utilizing resources and effectively responding to needs." (*Centesimus annus* #34).

However, the Pope also understood that a free economy "presumes a certain equality between the parties, such that one party would not be so powerful as practically to reduce the other to subservience." For this reason, the government "has the task of determining the juridical framework within which economic affairs are to be conducted, and thus of safeguarding the prerequisites of a free economy" (*Centesimus annus* #15).

In light of this teaching, we believe it would be a mistake for the Legislature to enact Assembly Bill 582. This bill would not only exempt rent-to-own (RTO) businesses from the Wisconsin Counsumer Act, it would actually prohibit the disclosure of "any percentage rate calculation, including a time-price differential, an annual percentage rate, or an effective annual percentage rate."

Prohibiting such disclosures is not in the best interest of consumers, particularly the poor and vulnerable, who are also likely to be the least informed.

By most measures, RTO agreements resemble credit transactions more than they do rental agreements, which is why Wisconsin is one of a handful of states that treats them like credit transactions and requires the disclosure of interest rates.

Lawmakers must also consider that if RTOs were to gain these concessions, what other industries would seek identical or similar exemptions?

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Our Catholic Charities and St. Vincent de Paul agencies confirm that one of the tragic circumstances of poverty is that those who are least able to pay for goods often end up paying the most. Public policy should not compound that tragedy by encouraging businesses that depend on ignorance and indebtedness.

In conclusion, allow me to quote from testimony on RTOs provided on July 26, 2011, by the Federal Trade Commission (FTC) before the House Financial Institutions and Consumer Credit Subcommittee. The FTC concluded that it supports efforts to "improve disclosures by making them clear, conspicuous, understandable, and useful for consumers when they shop for and compare products and services" (see p. 11 at http://www.ftc.gov/os/testimony/110726renttoowntestimony.pdf).

Since AB 582 would prohibit such disclosures, we respectfully urge you not to advance it.

Thank you.